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DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

8 CFR PART 100

CBP Dec. 15-17

Technical Amendment to List of Field Offices: Expansion of San Ysidro, California

Port of Entry to include the Cross Border Xpress User Fee facility

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Final rule; technical amendment.

SUMMARY: This document amends the Department of Homeland Security (DHS) regulations by revising the list of field offices to expand the limits of the San Ysidro, California Class A port of entry to include the Cross Border Xpress (CBX) user fee facility. Class A ports of entry are designated ports that process all aliens applying for admission into the United States. The CBX facility includes a pedestrian walkway connecting the Tijuana A.L. Rodriguez International Airport (Tijuana Airport) in Mexico to San Diego, California and a passenger terminal located in San Diego that will be used exclusively to process Tijuana Airport passengers traveling to and from the United States via the pedestrian walkway.

DATES: This rule is effective on December 9, 2015, the date the CBX facility will open.

FOR FURTHER INFORMATION CONTACT: Tara Ross, Office of Field Operations, tara.ross@cbp.dhs.gov, 202-344-1031.

SUPPLEMENTARY INFORMATION:

I. BACKGROUND

Ports of entry are places (seaports, airports, or land border ports) designated by the Secretary of the Department of Homeland Security where CBP officers or employees are assigned to accept entries of merchandise, clear passengers, collect duties, and enforce the various provisions of the customs and immigration laws, as well as other laws applicable at the border. The term “port of entry” is used in the Code of Federal Regulations (CFR) in title 19 for customs purposes and in title 8 for immigration purposes. Subject to certain exceptions, all individuals entering the United States must present themselves to an immigration officer for inspection at a U.S. port of entry when the port is open for inspection. See 8 CFR 235.1. Customs and immigration services may also be provided by CBP officers at facilities that are designated as user fee facilities pursuant to 19 U.S.C. 58b. User fee facilities are approved by the Commissioner of CBP to receive, for a fee, the services of CBP officers, including the processing of travelers entering the United States.

The ports of entry for immigration purposes for aliens arriving by vessel and land transportation are listed in 8 CFR 100.4(a). These ports are listed according to location by districts and are designated as Class A, B, or C, which designates which aliens may use the port. Class A ports are those designated for all aliens. Class B and C ports are restricted to certain aliens. If the facility processes aliens for immigration purposes, the

facility may be considered a port of entry for purposes of title 8 CFR. In such case, an amendment to 8 CFR 100.4(a) is necessary.¹

The Cross Border Express (CBX) User Fee Facility

On March 21, 2014, the Commissioner of CBP approved a request from Otay-Tijuana Venture, LLC for CBP to provide reimbursable inspection services, pursuant to 19 U.S.C. 58b, at a new cross-border user fee facility named “Cross Border Xpress” or CBX.² At this facility, CBP will provide a variety of inspection services, including immigration services.

The CBX facility was designed in accordance with U.S. and international security standards. It includes an enclosed pedestrian walkway connecting the Tijuana Airport in Mexico to San Diego, California and a passenger terminal located in San Diego that will be used exclusively to process ticketed Tijuana Airport passengers traveling to and from the United States via the walkway. The pedestrian walkway will be accessible only for ticketed Tijuana Airport passengers.

Travelers with departing flights from the Tijuana Airport will use the CBX facility’s north entrance in the United States to cross the international border into Mexico. To use the facility, these travelers must present a valid airline ticket for a flight departing from the Tijuana Airport in the next twenty-four hours and purchase a CBX bridge pass. Airline tickets and CBX passes may be purchased the same day at ticket windows at the north entrance. CBX passes may also be purchased online in advance. After being

¹ For customs purposes, CBP regulations list designated CBP ports of entry and the limits of each port in section 101.3(b)(1) of title 19 (19 CFR 101.3(b)(1)). User fee facilities are not considered ports of entry for purposes of 19 CFR 101.3(b)(1). Therefore, the designation of a user fee facility does not require an amendment to this provision.

² On July 22, 2015, CBP issued a press release announcing the establishment of CBX as a user fee facility pursuant to 19 U.S.C. 58b. It also indicated that CBX would operate as a Class A port of entry. See: <http://www.cbp.gov/newsroom/national-media-release/2015-07-22-000000/cbp-partners-new-cross-border-terminal-cross>.

subject to inspection by CBP officers, travelers will use the pedestrian walkway to cross the international border. At the Tijuana Airport, travelers will be processed by Mexican immigration and customs authorities. After processing, the travelers will enter the Tijuana Airport for their departing flight.

Travelers landing at the Tijuana Airport may use the CBX facility to apply for admission or entry to the United States. These travelers must purchase a CBX pass and use the CBX facility within four hours of their flight's arrival at the airport to apply for admission or entry to the United States. Passes may be purchased online in advance or at ticket counters at the Tijuana Airport. Travelers will be processed by Mexican immigration and customs authorities at the Tijuana Airport before entering the CBX facility. Travelers will use the CBX pedestrian walkway to cross the international border into the United States and then apply for admission or entry into the United States at the processing terminal where they will be subject to immigration, customs and agriculture inspection by CBP officers. CBP will process only pedestrians at the CBX facility. CBP will not process cargo, commercial entries, or vehicles.

Expansion of San Ysidro, California Class A port of entry to include the CBX User Fee Facility

The port of San Ysidro, California is included within the San Diego district and is listed in 8 CFR 100.4(a) as a Class A port of entry. This rule amends 8 CFR. 100.4(a) to expand the San Ysidro Class A port of entry to include the CBX facility.

II. STATUTORY AND REGULATORY REQUIREMENTS

A. Inapplicability of Public Notice and Delayed Effective Date Requirements

Under section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), rulemaking generally requires prior notice and comment, and a 30-day delayed effective date, subject to specified exceptions. Pursuant to 5 U.S.C. 553(a)(2), matters relating to agency management or personnel are excepted from the requirements of section 553.

This rule expands the San Ysidro Class A port of entry to include the CBX facility. CBP has already designated the CBX facility as a user fee facility pursuant to 19 U.S.C. 58b and has approved the request for CBP officers to provide reimbursable inspection services at the CBX facility to Tijuana airport travelers entering and departing the United States at the CBX facility. Otay-Tijuana Venture, LLC, the operator of the facility, will reimburse CBP for the expenses CBP incurs, including the salary and expenses of CBP officers that will provide the CBP services, in accordance with the approved request. The approved request to provide such services, and the update to the list of the Class A ports of entry to reflect this approved request directly relates to CBP's operations and agency management and personnel. As such, CBP finds that this rule pertains to a matter relating to agency management or personnel within 5 U.S.C 553(a)(2) which is excepted from the prior notice and comment and delayed effective date requirements of section 553.

Additionally, as provided in 5 U.S.C. 553(b)(3)(A), the prior notice and comment requirements do not apply when agencies promulgate rules concerning agency organization, procedure, or practice. This rule falls within that category.

As discussed above, on March 21, 2014, the CBP Commissioner approved the request from Otay-Tijuana Venture, LLC for CBP to provide inspection services at the

new CBX facility pursuant to 19 U.S.C. 58b. The designation of the CBX as a user fee facility means that CBP will be providing agency personnel at the facility, pursuant to the approved request, to process travelers for application for admission or entry into and departure from the United States. This rule, which updates the list of Class A ports of entry in 8 CFR 100.4(a) to include the CBX facility within the San Ysidro port of entry, simply makes the necessary amendments to section 100.4(a) to implement the CBP Commissioner's decision to designate the CBX facility as a user fee facility. It is a procedural or organizational rule that does not have a substantial impact on the user fee facility or on the public. For this reason, CBP finds that this is a rule of agency organization, procedure, or practice, which is not subject to notice and comment rulemaking pursuant to § 553(b)(3)(A).

B. The Regulatory Flexibility Act and Executive Orders 12866 and 13563

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) do not apply. This amendment does not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866, as supplemented by Executive Order 13563.

C. The National Environmental Policy Act of 1969

In 2009, the Otay-Tijuana Venture, LLC applied to the Department of State (DOS) for a Presidential Permit pursuant to Executive Order 11423, as amended, which authorizes the Secretary of State to issue Presidential permits for the construction, connection, operation, and maintenance of facilities at the borders of the United States if he or she finds them to be in the national interest. In support of its application for a Presidential permit, Otay-Tijuana Venture, LLC submitted a draft environmental

assessment (EA) prepared under the guidance and supervision of DOS, consistent with the National Environmental Policy Act (NEPA). This EA examined the effects on the natural and human environment associated with the construction and establishment of the facility. On December 29, 2009, DOS provided public notice of the draft EA in the **Federal Register** (74 FR 68906) and invited public comment for 45 days.

On July 23, 2010, DOS published a notice in the **Federal Register** (75 FR 43225) announcing that it adopted the EA and issued a “Finding of No Significant Impact” concluding that the CBX facility would not result in a significant impact on the human and natural environment. On August 10, 2010, DOS published a notice in the **Federal Register** (75 FR 48408) announcing the issuance of a Presidential permit, effective August 3, 2010, to Otay-Tijuana Venture, LLC for the construction, operation, and maintenance of the CBX facility.

D. Signing Authority

The signing authority for this document falls under 19 CFR 0.2(a) because the establishment of this title 8 Class A Port of Entry is not within the bounds of those regulations for which the Secretary of the Treasury has retained sole authority. Accordingly, this rule may be signed by the Secretary of Homeland Security (or his delegate).

List Of Subjects in 8 CFR Part 100

Organization and functions (Government agencies)

AMENDMENTS TO REGULATIONS

For the reasons set forth above, part 100 of title 8 of the Code of Federal Regulations (8 CFR part 100) is amended as set forth below.

PART 100 — STATEMENT OF ORGANIZATION

1. The authority citation for part 100 continues to read as follows:

Authority: 8 U.S.C. 1103; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108-458); 8 CFR part 2.

§ 100.4 [Amended]

2. Amend §100.4 in paragraph (a), under the heading “District No. 39-San Diego, California”, subheading, “Class A ”, add “(including the Cross Border Xpress (CBX) facility)” after “San Ysidro, CA”.

DATE: November 30, 2015

Jeh Charles Johnson,
Secretary

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